



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 27, 1989

Mr. Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration
For Professional Engineers
P. O. Drawer 18329
Austin, Texas 78760

LO-89-40

Dear Mr. Nemir:

You ask about the constitutionality under article I, section 3, of the Texas Constitution, of the temporary \$110 increase in the annual registration fee for professional engineers. Acts 1987, 70th Leg., 2d C.S., ch. 5, art. 9, at 32. In Attorney General Letter Opinion LO-88-135 we considered the constitutionality of the fee increase under a number of constitutional provisions. You now ask whether the tax violates article I, section 3, of the Texas Constitution, which we did not discuss in LO-88-135. Article 1, section 3, provides:

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

In Hurt v. Cooper, 113 S.W.2d 929 (Tex. Civ. App. Dallas 1938, no writ), the court considered the constitutionality under article I, section 3, of a chain store taxing statute. In upholding the tax the court quoted the following language from State Bd. of Tax Comm'rs of Indiana v. Jackson:

The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in

Mr. Charles E. Nemir, P.E.
April 27, 1989
Page 2

taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings, or occupations.

Hurt, 113 S.W.2d 929, 934 (quoting 283 U.S. 527, 537 (1931)).
The court went on to hold as follows:

Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great. The past decisions of the Court make this abundantly clear.

Hurt at 935. See also Aransas County Appraisal Review Bd. v. Texas Gulf Shrimp Co., 707 S.W.2d 186, 195-96 (Tex. App. - Corpus Christi 1986, writ ref'd n.r.e.) (holding that there are vast differences between shrimp trawlers and freighters and that those differences provide a reasonable basis for different tax classifications). Under the standards set out in Hurt v. Cooper, we think a court would have no trouble upholding the occupation tax on registered engineers.

Yours very truly,



Sarah Woelk
Letter Opinion Section
Opinion Committee

SW/lcd

Ref.: ID# 6174